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No. _____

Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

WILLIAM I. KAUFMAN

Petitioner,

v.

BERKMAN, RUSLANDER, POHL, LIEBER
& ENGEL, ATTORNEYS AT LAW
R. DENNIS OSTERMAN, ESQ.
ROBERT ENGEL, ESQ. AND
FOSTER S. GOLDMAN JR., ESQ.

Respondents

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

A. Whether private parties who are also lawyers acted under Color of State Law when they allegedly conspired with a Pennsylvania State official, a Notary-Reporter-Examiner, in having Court ordered depositions changed and altered and later in aiding that officer in concealing those acts from the state court.

B. Whether private parties who are also lawyers acted under Color of State Law when they allegedly arranged for an employee who is also a Notary Public to purposedly <u>not</u> place her seal on an officially filed affidavit.

C. Whether those same lawyers who allegedly committed the above acts, did so deliberately and wilfully to violate the petitioner's Civil Rights under 42 U.S.C. #1983 and with fraudulent intent to violate his rights under the 5th and 14th amendments.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i, ii
OPINIONS BELOW.....	2
JURISDICTION.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	23
A. Private parties who are also lawyers, acted under Color of State Law when they allegedly conspired with a Pennsylvania State Official, a Notary-Reporter-Examiner, in having Court ordered depositions changed and altered and later in aiding that officer in concealing those acts from the State Court.	...23
B. Private Parties who are also lawyers acted under Color of State Law when they allegedly arranged for an employee who is also a Notary Public to purposely not place her seal on an officially filed affdavit.	...39
C. These same lawyers who allegedly committed the above acts, did so deliberately and wilfully to violate the petitioner's Civil Rights under 42 U.S.C. # 1983 and with fraudulent intent to violate his rights under the 5th and 14th amendments.	47

TABLE OF CONTENTS

D. The U.S. District Court...59
that conducted this case,
acted improperly and in
violation of the petitioner's
rights under the 5th, 14th
and 7th Amendments by
allegedly having a Court
Reporter delete an important
part of the transcript of the
Status Conference, thus
predjudicing those
constitutional rights.

CONCLUSION.....65

APPENDICES..... A-1

..... B-1

..... C-1

..... D-1

..... E-1

..... F-1

..... G-1

..... H-1

TRANSCRIPT T-1

..... T-2

..... T-3

TABLE OF AUTHORITIES

Page

Adickies v. S.H. Kress and Company 398 U.S. 144, 152, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)..... 35

Beck v. Bethlehem Borough, 2 Pa. C.C. 511, 3 Lanc. Rev. 386, 2 Lehigh 325 (1886)..... 32

Beisenbach v. Guenther, 588 F. 2d. 400, 402 (3d cir. 1978)..... 62

Bernal v. Fainter, 81 L. Ed. 2d. 175 (1984)..... 42

Berkel v. Fox Farm and Road Machinery, 581 F. Supp. 1246 (1984)..... 57

Bevan v. Krieger, 53 S. Ct. 661, 289 U.S. 459 (1932)..... 31

Chicago Coleseum Club v. Dempsey, 8 D & C , 420 (1926)..... 33

Conley v. Gibson, 355 U.S. 41, 45-46 (1957)..... 62

Cord v. Smith, 370 F. 2d. 418, C.A. (1966)..... 43

Dennis v. Sparks, 449 U.S. 24,28,101 S. Ct. 183, 186-187, 66 L. Ed. 185 (1980)..... 35-58

Endicott Johnson Corp. v. Smith, 266 U.S. 291, 69 L. Ed. 293, 45 S. Ct. 63 (1924)..... 47

Eugene Ltd. v. Cusani, 20 D & C, 479 (1932)..... 33

Ex. Parte Virginia (1879) 100 U.S. 339, 25 L. Ed. 676..... 27

Hill v. Alliance Bldg. Co., S.D. 60 N.W. 752, 6 S.D. 160,55 Amm. S.R. 819 (1894)..... 43

Kaufman v. McCrory Stores Division of McCrory Corp., 613, F. Supp. 1179 (M.D. Pa. 1985)..... 25-26
..... 29,64

Kedra v. Philadelphia (1978 D.C. Pa.) 454 F. Supp. 652 65

Kipp v. People's Bank & Trust Co., 110 N.J.L., 178, 164, A 253, 254 (1933)..... 36

Krueger v. Miller, 489 F. Supp. 321, (E.D. Tenn. N.D. 1977) aff'd without opinion 617 F. 2d. 603, 6th Cir. 1980)..... 26,45

Litton Systems v. American Tel. & Tel. 91 F.R.D., 574 (1981)..... 55

Lugar v. Edmonson Oil Co., Inc. 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d, 482 (1982)..... 35

Martin v. Wainwright (1976) C.A. 5, Fla.) 526 F. 2d. 938 64

Melvin v. Handley, 6 Lanc. Rev. 47,1 Wilcox, 235 (1888)..... 32

Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d., 492 (1961)..... 56

Nelson v. United States, (1905) 201 U.S. 673..... 33

Polk County v. Dodson, 554 U.S. 312 (1981)..... 29

Tower v. Glover, 104, S. Ct. 2820, (1984)..... 35

Washington v. Official Court Stenographer, 251 F. Supp. 945 (1966) (E.D. Pa.)..... 27-45

OTHER AUTHORITIES

Page

3 A.M. Jur, 2d, Sec. 18, pg. 395... 44

Abraham Lincoln Encyclopedia
Pa. State Library, page 180..... 59

Anderson, Pa. Civil Practice
on Rule 4017.5..... 37

Federal Civil Rights Act, Civil
Practice by Chester J. Antieau, Pa.
State Library, Concerning the Civil
Rights Act of 1871 #39, pg. 67.... 26-27

Federal Procedure, Lawyers Edition,
Chapter 26, Book 10, sec. 119..... 54-55

2A. C.J. S. #39, pg. 476..... 44

New York Jurisprudence
42 N.Y. Jur. #1, ... 36

Pa. Notary Public Act of Aug. 1953
P.L. 1323 # 3. as amended
57-P.S. # 149, (Purdon Supp. 1985) 7,29
..... 30,34
..... 37,41

Penna. Law Encyclopedia, Notaries #1
pg. 116..... 36

Penna. Law Encyclopedia, sec. 271
pg. 170, ch. 9..... 46

World Book Encyclopedia, Vol. 18,
pg. 142..... 63

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PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

William I. Kaufman (Kaufman) petitions for a Writ of certiorari to review a Judgement of the United States Court of Appeals for the Third Circuit rendered on August 12, 1986.

OPINIONS BELOW

The January 17, 1986 Judgment Order and Memorandum of the United States District Court for the Western District of Penna., explaining and deciding the case of Kaufman v. Berkman, Ruslander, et. al. may be found in A and B attached. The District Court on that day decided to dismiss this lawsuit on a Motion for Dismissal by the Respondents and so notified the various parties.

Petitioner then filed an Appeal with the United States Court of Appeals for the Third Circuit which was filed and docketed on April 13, 1986. The United States Court of Appeals then affirmed the Judgement of the District Court on August 12, 1986. (App. C.). The Appeals Court advised that a formal mandate would follow. [1/]

[1/] All references to the appendices are indicated as (App-). All References to the Status Conference Transcript are indicated as (Tr.).

JURISDICTION

On August 12, 1986, the Court of Appeals entered judgment affirming the Dismissal of the case of Kaufman v. Berkman. Ruslander et. al. (App. C.) The jurisdiction of this court is invoked under Title 28, United States Code, section 1254. (1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V.

Nor be deprived of life, liberty, or property, without due process of law...

United States Constitution, Amendment XIV.

Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

STATEMENT OF THE CASE

This case arises out of a separate lawsuit brought by Kaufman against Penn Needle Art Co. in the Court of Common Please of Allegheny County, Pennsylvania filed in November 1982. Petitioner had worked under contract for Penn Needle on a commission basis as a Manufacturer's Representative since 1971. Because of loss of past and future commissions, Kaufman filed the above state court suit in Allegheny County.

During the lawsuit, Kaufman asked two employees of McCrory Stores Division of McCrory Corporation to appear at the offices of Naugle and Sullivan for legally ordered depositions on June 28, 1983. McCrory Corp. is a fully owned subsidiary of Rapid American Corp. of New York City, N.Y. The subpoenae to appear were arranged for and prepared by Kaufman's then Counsel, Mr. Patrick Sullivan of Harrisburg, Penna. Sullivan was later replaced by Kaufman acting Pro Se. on Sept.

27, 1983. There were also 2 Pittsburgh Counsel John and George Shorall. They left the case on September 27, 1983. Attorney Peter Skeel of Pittsburgh, Penna. took over the case from Kaufman in February 1984. Kaufman handled the case acting Pro Se. from September 27, 1983 to February 1984.

Petitioner Kaufman's claim arises from allegations that the respondent lawyers planned and conspired with their client, Penn Needle, A McCrory lawyer or lawyers, the two deponents, and other McCrory employees on June 27, 1983 and before, to have William Agnew and Michael Boukis testify falsely, about 2 key meetings, one of April 5, 1982 and the other a Post Meeting of June 19, 1981. To attempt to eliminate this purposely false testimony, the respondents and the various McCrory and Rapid American employees arranged for the Notary-Reporter-Examiner, Helena L. Bowes, employed by the reporting firm of Geiger & Loria, Inc., while

performing her official duties in taking and transcribing depositions, to omit, change and alter portions of the testimony in the transcriptions. Bowes is the daughter of Virginia Loria, owner of Geiger & Loria. These changes were allegedly made in a conspiracy with various McCrory and Rapid American employees.

The two McCrory employees, Agnew and Boukis had met the day before the depositions on June 27, 1983, with Paul Berger, a principal of Penn Needle Art Co., R. Dennis Osterman, Esq., a lawyer for Penn Needle and an associate lawyer with Berkman, Ruslander, Pohl, Lieber and Engel, Attorneys of Pittsburgh, Pennsylvania and a lawyer or lawyers of McCrory Corporation. The lawyer or lawyers of McCrory Corp. were employed as part of a full time legal staff under control of McCrory Corp. and Rapid American Corp. of New York, N.Y. This meeting of June 27, 1983 took place at the McCrory Corp. York, Penna.

offices. The meeting was held to discuss how Agnew and Boukis should testify and what they were to say the next day.

On June 28, 1983, before the start of the two depositions, the respondents arranged for a stipulation with the Reporter-Notary Public Bowes to have her waive sealing and certification and she did so accordingly, by not placing her seal on the finished depositions and by not placing her commission ending date near the jurat as required by the Pennsylvania Notary Public Act of 1953 (2/) Helena Bowes had been sent to take the depositions by Virginia Loria, her mother and employer. Arrangements had been made prior to the depositions between Virginia Loria and Patrick Sullivan Esq. Respondents also entered into the arrangements by making 2 as

2/ Sec. 160, Position of Seal and date of expiration of commission:
(a) The seal of a Notary Public shall be impressed opposite the jurat, and affixed in such manner as to make a legible impression on all documents executed.

> (b) The date of expiration of a Notary's commission and the location of his office shall be written, typed or stamped immediately below the signature of the notary. (P.L. 1323)

yet unidentified local telephone calls from the Holiday Inn Town Motel on the night of June 27, 1983. These telephone calls according to records of the Holiday Inn were made by either Osterman or Berger or both together after 7:00 P.M. that day.

The two depositions were attended by Sullivan, Kaufman's Counsel, Helena Bowes the Reporter-Notary Public, Osterman, Counsel for Penn Needle and an associate of the respondents, Berger, principal of Penn Needle, the two deponents, Agnew annd Boukis in consecutive order and Kaufman.

Petitioner heard Osterman, Agnew and Berger all talking about being in York, Pennsylvania the day before at McCrory York headquarters, in a first recess of about 15 to 20 minutes long. In a second recess of about 10 to 15 minutes duration, Kaufman heard Agnew saying to Paul Berger,

paraphrased as follows:

AGNEW TO BERGER: I'm glad we had a chance to meet yesterday in York after our meeting with the lawyer (or lawyers) to go over the open orders now in, Would you please follow them up with Pittsburgh.

The transcripts of the two depositions were completed on July 19, 1983 and copies were sent to Sullivan, and to Penn Needle's Counsel, the various respondents of Berkmman Ruslander, immediately. Kaufman never saw the finished depositions fully until Sept. 27, 1983 when he took over the Penn Needle case himself Pro. Se. after his then Pittsburgh Counsel, John and George Shorall resigned from the case. Because of the pressing need to file various papers, Kaufman did not study the two depositions until October 9 and 10, 1983. When he finally saw them, Kaufman immediately noticed that the two recesses had been completely blocked out. All reference to the first one was simply obliterated by making the period before the recess and after the recess in the Agnew

deposition appear to run together and the second recess was removed by changing the ending time of the Agnew Deposition to 1:00 P.M. The second Boukis deposition was left to start in the text at its proper time of 1:00 P.M. This meant that the 2 depositions appeared by the times put in by H. Bowes to start and end at exactly the same time, a literally impossible situation.

In a later investigation by Trooper Belsterling and Corporal DiPierro of the Pennsylvania State Police, White Collar Crime Unit, in March 1985, they felt strongly enough after interviewing Helena L. Bowes about the 2 depositions to go to the Dauphin County, Pennsylvania District Attorney's Office for a charge of one count of falsifying evidence. This charge is still pending.

Petitioner Kaufman upon first reading the 2 depositions found other important differences from what he had heard at th depositions on June 28, 1983 and what was now

on the completed versions. No questions had been asked by Sullivan to Agnew about the two key meetings in the actual questioning until after the first recess. These meetings were meetings between Kaufman and Agnew on April 5, 1982 (App. D,E and F) and the second post meeting on June 19, 1981 between Agnew and Boukis. The first meeting concerned a discussion over prices to be charged by Penn Needle on the big selling #604 drapery item and the attempt by Agnew to coerce Kaufman into reducing his commission rate, and the second meeting concerned a discussion between Agnew and Boukis about letting Kaufman stay on the line about a year or to approximately July 1982 when Kaufman was actually terminated by Penn Needle. Kaufman was told about what was said at the Post meeting by Agnew on April 5, 1982. Both the meeting of April 5, 1982 and the Post Meeting of June 19, 1981 were completely denied by Agnew and Boukis. (App. D, E and F).

Instead, when the two meetings appeared in the Agnew text, the few questions that remained from many that were asked by Sullivan were placed out of context in a far earlier part of the Agnew deposition.

Agnew had answered to all questions about the 2 meetings of April 5, 1982 and the second post meeting of June 19, 1981 with either "I don't remember or I don't recall." (App. F). He had answered questions about the first meeting of June 19, 1981 fully but denied all knowledge of the 2nd post meeting, a subject that was deleted from the Agnew text completely, both questions and answers.

Instead what respondents and McCrory employees caused to appear in the completed depositions was as follows: (exactly)

SULLIVAN Q In reference to April 5, 1982 or in the spring of '82, did you have a discussion with William Kaufman on the pricing of the items that you were purchasing from Penn Needle Art Co.?

AGNEW A Would you clarify that question? My job as a buyer in working with merchandise, is disucssion or pricing items at all times. I'm not sure what you are asking.

In that changed version of the question and answer, Agnew's finished text has simply deleted the I don't remember, I don't recall answers to "Would you clarify", (App. F) certainly not the truth but a version designed to compromise the truth of what had actually been said at the depositions.

Other important changes were noted by Kaufman. At the actual meeting of April 5, 1982 between Agnew and Kaufman where they had discussed pricing of the large volume drapery item #604, Agnew had drawn on a paper, 2 circles, one a large one and one a small one. He then said to Kaufman, "Isn't it better to have a smaller piece of a large pie than a larger piece or a smaller pie or no pie at all." While making that statement, he drew 2 pie pieces within the circle to illustrate his point. He then went on to say:

(paraphrased) that if Kaufman did not agree to cut his commission, he would pick up the telephone, call Penn Needle and have Kaufman off the line in five minutes. The meeting of April 5, 1982 is well documented (App. D, E.) by letters between Kaufman to Berger on April 6, 1982 and Berger to Kaufman on April 13, 1982, concerning pricing. The text of what appeared in the finished depositions is as follows: (exactly)

SULLIVAN Q There's certain ways of approaching pricing. Did you ever discuss the amount of commission that Mr. Kaufman was getting for his sale?

AGNEW A No sir, I did not discuss the amount of commission.

SULLIVAN Q Do you ever remember in April of 1982 of drawing circles for Mr. Kaufman and saying there is a large circle for a large purchase and a smaller circle for smaller purchases, if the price couldn't be met? In other words you could buy more with the big circle and with the smaller circle you could buy less.

AGNEW A I really don't recall that.

SULLIVAN Q You don't remember that?

AGNEW A No.

SULLIVAN Q Did you ever tell Mr. Kaufman about calling Penn Needle to reduce his commission in order to get a better price?

AGNEW A Telling him,

SULLIVAN Q Yes

AGNEW A I don't recall, no.

Sullivan had actually asked the question about the circle in the proper way as he was told both orally and in writing on 3 different occasions, how the circle question was really framed. This question as it appeared was changed to go with Agnew's untruthful answers about not discussing the changing of commission, at the April 5, 1982 meeting in his office.

Other alterations were also made. There were questions that were asked about the July 19, 1981 post meeting that were blocked out. That meeting concerned the discussion between Boukis and Agnew where Boukis had asked Agnew to give Kaufman only a year on the line to

help get the #604 item started in the chain. Also an important question was deleted about which key people from McCrory's York and New York office had requested Agnew to cut commissions or eliminate Manufacturer's Representatives and get good pricing on strong volume items. All these names were deleted from the finished text. H. Bowes had a hard time spelling these names and had to ask Sullivan for them to be spelled out letter by letter.

The two completed depositions totaled 105 pages and ran from 10:00 AM to 1:25 PM with no breaks shown even though two had actually occurred; a total time of approximately 3 1/2 hours. Yet only 105 pages of testimony were used on 25 lines per page paper, thus averaging to only 30 pages per hour. This is from an invoice of Geiger & Loria shown as Exhibit # 58 attached to the complaint. The relatively small amount of pages was accounted for by the amount of questions, answers, recesses and pages that

were omitted in the completed versions of the depositions. The respondents were well aware of these changes and allegedly helped cause them.

The Boukis deposition also showed evidence of untruthful testimony and changes to make that evidence appear right. When asked about the Post meeting of June 19, 1981, Mr. Boukis answered: (paraphrased)

BOUKIS: I attend a lot of meetings in the course of a year. I can't remember all of them.

This statement was completely deleted in the final version of the text about the post meeting, as follows (exactly)

SULLIVAN Q On this date, did you meet with Berger and Agnew out of the company of Mr. Kaufman?

BOUKIS A Not that I recall,

SULLIVAN Q Was there any discussion at this time whatever, concerning the possibility that you would work with the vendor and without the sales representative Mr. Kaufman?

BOUKIS A I cannot recall any discussion like that.

SULLIVAN Q Did you have any influence with your discussion that Kaufman's services would not be utilized?

BOUKIS A No I did not.

Other questions were asked and removed from the completed text about the Post meeting of June 19, 1981. They included questions about where it was held, when it was held and what it was all about. Also the question about the meeting with Berger and Agnew was incorrectly phrased, as it was properly asked as "Did you meet with Agnew out of the company of Kaufman and Berger." Sullivan had been told both orally and in writing that Berger and Kaufman were both downstairs in the McCrory reception area when the Post meeting of June 19, 1981 occurred. The meeting was on the 2nd floor. The question was phrased properly when asked by Sullivan. It was changed in the finished text.

During October 1983, Kaufman noted to the State Court in Pittsburgh, about the

alterations and omissions in the depositions in various papers submitted to that court. All these allegations were denied emphatically both orally and in writing by Osterman and the other respondents. Kaufman called H. Bowes to a deposition on October 28, 1983 where she was only permitted by her Attorney James Ronca to give her name, address and occupation. At that deposition the respondents through their Associate Osterman made the following sweeping denial of the allegations; (exactly)

> OSTERMAN: "I would further note that the purpose of the deposition is to inquire of the court reporter who transcribed the previous deposition taken in the law office of Patrick Sullivan which I attended, and I would state for the record that in my view, having reviewed that transcript there is no purpose or no relavancy to taking the court reporter's deposition at this time."

This statement was made by the respondents despite the obvious and glaring problems with the recesses and the altered ending time of the Agnew deposition.

During October 1983, the respondents filed 2 like affidavits which were part of a Motion for Summary Judgment. These affidavits were prepared by Linda S. Kabay, a Notary Public who was also an employee of the respondent law firm, Berkman, Ruslannder. One of these affidavits had a seal and one did not. Both of these affidavits were submitted and filed with the Prothonotory's Office in Pittsburgh at the exact same time 4:03 PM and on the exact same date Sept. 29, 1983. They were both officially stamped and received by the clerk in that above office. While both the motions and affidavits were identical, there was a difference in the cover sheet between the two motions. One had the name of John Shorall Esq. and his address on it and the other did not. The Notary Public Act of 1953 requires that all official documents signed by a Notary have a Seal near the Jurat.

After getting no information from H. Bowes, petitioner, Pro Se. entered Motions

into the court of State Judge Wettick on November 18, 1983 to strike the wrongful parts of the two depositions and to ask for sanctions against H. Bowes for not answering and to compel her to testify. Both motions were denied, partly due to the fact that the true nature of the depositions had been hidden from Kaufman past the timely period allowed for protesting wrongful depositions. The Honorable Judge Wettick's orders had the effect of forcing Kaufman to give up his right to due process since he would have been forced to go into court with altered and tainted evidence. His entire chance at fair trial on the McCrory issue had been fully jeopardized.

As part of their written denial of the "Motion to Strike Wrongful Sections", the respondents made the following untruthful statement to the state court for purposes of winning the Motion.

OSTERMAN: (exactly) as follows:

> "Transcripts of those depositions were completed on or about June 19, 1983 and were duly certified as accurate by the Court Reporter Ms. Helena Bowes of Geiger-Loria Reporting Service, Inc."

The above statement was made despite the fact that the depositions had no seal or no commission ending date. They were therefore not actually duly certified in any sense of the word. This statement was made by a 50 lawyer major law firm that has been in practice for scores of years. In that same reply they also made categoric denials that anything at all was wrong with the depositions.

After hearing advice from his then new Counsel, Skeel of Pittsburgh, that it would appear impossible to gain the truth from the McCrory witnesses based on the altered depositions, Kaufman settled the case with Penn Needle for $24,500 in April 1984. The respondents, McCrory, Rapid American, H. Bowes and Geiger & Loria had thus helped Penn

Needle reduce the McCrory part of his claim to almost nothing. Respondents allegedly gave the direction to the other parties involved in achieving their wrongful ends. In so doing respondents caused Kaufman much physical and emotional stress. On October 7, 1985, this suit was filed.

REASONS FOR GRANTING THE PETITION

A. Private parties who are also lawyers acted under Color of State Law when they allegedly conspired with a Pennsylvania State Official, a Notary-Reporter-Examiner, in having Court ordered depositions changed and altered and later in aiding that officer in concealing those acts from the State Court.

In the public image, the practice of law is considered among the premier professions, ranking equally with medicine, science and other skills that require great education and years of preparation. Lawyers also have a distinct responsibility for the public interest as well, since in addition to helping the less educated and less informed person in the law, they occupy countless important positions in the government at all

levels not only in the judiciary but in the executive and legislative branches both state and federal. Yet when law is practiced by such an educated group as the respondents, as alleged and described in the foregoing Statement of the Case, then persons of such high intelectual abilities can use that same superb skill in ways that can be harmful to society and counter productive to American life and aspirations.

The respondents knew that when they allegedly coached witnesses at depositions in conspiracy with others, to make untruthful statements and then helped to implement a plan to have a State Official, a Notary Public make illegal changes in those depositions to help their client Penn Needle and protect the deponents and their company, McCrory from possible recrimination, they were acting improperly as lawyers. They had to know from their great experience in the law that the possibility of collusion or conspiracy between a Notary and one party in

a lawsuit could be extremely detrimental to the opposing party and have the effect of weakening a strong case before it ever gets to court. This is not law as practiced by former great lawyers and Presidents, Abraham Lincoln and William Howard Taft, but a type of law more closely resembling the practices of some corrupt home improvement contractors who prey upon the innocent and unwary. This alleged type of practice can gain the legal profession nothing but public contempt and utter disrespect.

The District Court in its Memorandum Opinion refers to the case of Kaufman v. McCrory Stores Division of McCrory Corp. 613 F. Supp. 1179 (M.D. Pa. 1985) as its main authority for Denying the Petitioner's Complaint and its dismissing of this case. This Kaufman v. McCrory et. al. action is now pending before this Honorable Court. Therefore, even though it is closely related and is based on many of the same grounds and facts, it should not be used as a controlling

reason for dismissal of this present Kaufman v. Berkman, Ruslander et. al. case. And further, the Penna. Middle District Court's granting of immunity for all Notary Public-Reporters-Examiners under 42 U.S.C. #1983 in the taking of depositions is highly questionable in the light of legal precedence and legal background stemming from the very beginning of the U.S. Republic and before. Further as the case of Krueger v. Miller, 489 F. Supp. 321 (E.D. Tenn. N.D. 1977) aff'd without opinion 617 F. 2d 603 '(6th Cir. 1980) clearly shows, there is a distinct difference of opinion between the 6th Circuit and the 3rd Circuit over Notary Publics who are also state officials of both Pennsylvania and Tennessee acting in wilful Misconduct. The pending decision of this Court in Kaufman v. McCrory will help to clarify this apparent conflict between the Circuits.

From the book Federal Civil Rights Acts, Civil Practice, by Chester J. Antieau, Pa. State Library, concerning the Civil Rights

Acts of 1871 comes this: (exactly) #39, pg. 67

> "There is no convincing proof that the Congress responsible for the Civil Rights Act ever intended to immunize any state or territorial officials or employees. It is more than likely that the Congress intended to do away with whatever common-law immunities that existed. The language of the Act is sufficiently broad to include all state officials. The 1880 case of Ex parte Virginia (Ex Parte Virginia (1879) 100 US 339, 25 L. Ed. 676) decided by a Supreme Court roughly contemporaneous with the generation responsible for the Civil Rights Acts held a judge was not immune form criminal sanctions under those acts and it is safe to conjecture that this Court would have held judges responsible under the civil side."

It was in this vein of thought toward limiting immunity under 42 U.S.C. 1983 that one District Court ruled in favor of the indigent prisoner in Washington v. Official Court Stenographer 251 F. Supp. 945 (1966) (E.D. Pa.) In that case according to records of the case, the incarcerated prisoner, Washington tried for almost two years to get a transcript of the trial for which he had been sent to prison, in his effort to file for a Writ of Habeus Corpus. Finally after

being rebuffed by the Official Court Stenographer for the city of Philadelphia, he secured 2 Court orders from State Judges Carroll and Skelly, the first on March 25, 1965 and the second on July 27, 1965. Finally after the #1983 action was filed, the transcript was sent to the prisoner almost at the end of his term. The District Court therefore held that the immunity asked for by the Solicitor of the City of Philadelphia would not be granted to the Court Stenographer and so the Stenographer Muller was held liable under 42 U.S.C. #1983. Thus, this poor indigent prisoner through great effort in filing a Pro Se. complaint had establihsed an important precedent of law toward the breakdown of immunities under 42 U.S.C. #1983 that had not been the intent of the framers of the law when it was first written.

Likewise the attempt of the two Courts, one in the Middle District and one in the Western District of granting immunity to

parties who have allegedly committed gross misconduct, by comparing both Kaufman cases to the case of Polk County v. Dodson 554 U.S. 312 (1981), should fail. The Courts related this present case and the previous Kaufman v. McCrory case to a lawyer who in defending her client had to act independent of the state. Had she not acted in this way in defense of her appointed client as a Public Defender, the state could have ordered her not to pursue the defense of her client or to pursue it in a half hearted manner. The public defender system which has had an excellent record overall in all states could not work so well as it has, without the zealous defense the Public Defenders give to their clients. This, in spite of the fact that their salaries are paid by the various states. There is simply no reasonable comparison between a lawyer acting in defense of her client and a Reporter-Notary Public-Examiner performing an official function that is given her by law in the Penna. Notary

Public Act of 1953. Quoting from the Memorandum of the Middle District Court Sec. 111 comes this:

> "In Pennsylvania qualified individuals are eligible for the "office of notary public", the Notary Public Law, Act of August 21, 1953, P.L. 1323 #3 as amended 57 P.S. #149 (Purdon Supp. 1985). Notaries Public are commissioned by the Secretary of the Commonwealth, 57 P.S. #151 (Purdon Supp. 1985) for a term of four years. 57 P.S. #148. Their duties include the power to administer oaths and affirmations. Id at #162, and to take depositions id. at #164 Superficially it would appear that Bowes was thus acting under color of state law when she was recording the depositions and consequently, subject to suit under the Civil Rights Act of 1871."

Therefore the Middle District Court has acknowledged Bowe's power to take depositions under law, thus clearly meeting the requirements of 42 U.S.C. #1983 as follows:

> 42 U.S.C. #1983 provides that. "Every person who under color of any statute, ordinance, regulation, custom or usage of any state...subjects or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In granting this power to take depositions

the State of Penna. has also granted in that power to Notary Publics the right to act as officers who take depositions or act as examiners. To say that a person can take a deposition but cannot act as an examiner, as both these decisions contend, would be an impossible situation that bears no reality to what a Reporter-Notary Public actually does. They must act as examiner in "taking depositions" under law to maintain some kind of judicial sanctity to the taking of sworn testimony. There surely must be an examiner at a deposition.

There is ample precedence in Pennsylvania law for support of the role of Notary Public as an examiner at an official deposition. Yet there is no precedence whatsoever for a stenographer who is also a Notary Public not to be considered as an examining officer at a deposition. Some of the state and federal precedence for this are as follows: In the case of Bevan v. Krieger 53 S. Ct. 661, 289

U.S. 459 (1932) it states:

> Headnote #2 Depositions "Officer taking deposition does not generally rule upon competency or materiality of evidence, but testimony is taken subject to reserved right to object at trial."

From the Penna. case of Melvin v. Handley, 6 Lanc. Rev. 47,1 Wilcox 235 (1888) comes this:

> "An examiner is an officer of the Court which has appointed him. His duties are to cause the witnesses of the respective parties to come before him, and after they have been sworn, to reduce their testimony to writing and certify it to the court."

The fact that H. Bowes did not reduce the testimony to writing properly or certify it properly to the court at the behest of the respondents does not take away her role as an examiner.

In Beck v. Bethlehem Borough, 2 Pa. C.C. 511,3 Lanc. Rev. 386, 2 Lehigh 325 (1886) it explains:

> "The duties of an examiner are chiefly clerical, and he should put down the answers of the witnesses as delivered and note the objections therein."

Adding further to this trend of thought by

the various Courts is the case of Chicago Coliseum Club v. Dempsey, 8 D&C, 420 (1926).

> "Coloquially, but not technically, we sometimes draw a distinction between a deposition and a commission restricting a deposition to the oral examination of a witness without written interrogatories and reducing his testimony to writing to a commission where the questions are propounded by written interogatories. There is no justification for this distinction; the word depositions is used in the act in its accepted technical meaning."

And in Nelson v. United States, 1905, 201 U.S. 673, it state in headnote #2:

> Comtempt-refusal to testify before Special Examiner in materiality of evidence no defense--The immateriality of the evidence sought to be elicited cannot justify the refusal of witnesses to obey the orders of the Federal Circuit Court, requiring them to answer the questions put to them and to produce written evidence in their possession on their examination before a special examiner."

Finally on this thought is the case of Eugene Ltd. v. Cusani, 20 D & C, 479 (1932) stating:

2. "Parties or their attorneys may agree to waive certain formalities in the taking of depositions, but witnesses must testify under oath before a qualified person competent to certify the matter to the court."

In short, only under rare circumstances in this modern day would a person ever give

testimony at a deposition without appearing before a legal examiner given the right under law to examine the witness. For this reason H. Bowes must have surely been acting under Color of State Law when she recorded the testimony and later transcribed it. For a plain stenographer to have done so without the presence of a Notary Public to supervise, would have been both illegal and improper. Therefore since she was one and the same person, both a Notary and a stenographer, she was acting under Color of State Law.

The respondents as private parties who allegedly encouraged the false testimony in the first place and then attempted to cover it up had to be acting therefore in conspiracy with a state offical under the Notary Public Act or 1953. And as both District Courts have stated in their opinions based on numerous cases, private parties who act in conspiracy with a Public Official (Notary Public-Reporter-Examiner) can be held liable under 42 U.S.C. 1983. Also since they

helped H. Bowes to conceal her involvement, on 2 occasions, October 28, 1983 and November 18, 1983 and in various Court papers submitted in October and November of 1983, the respondents continued to take an active role in the overall conspiracy.

Therefore the legal precedence of the following cases as rendered by this honorable court must be considered in the respondent's liability in this present case: All these cases repeat the same general idea, that private parties who conspire with a state actor are liable under 42 U.S.C. #1983, when they violate a person's constitutional rights.

Re: Adickies v. S.H. Kress and Company 398 U.S. 144, 152, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)
Dennis v. Sparks, 449 U.S. 24,28,101 S. Ct. 183, 186-187, 66 L. Ed. 185 (1980)
Lugar v. Edmonson Oil Co., Inc. 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d, 482 (1982)
Tower v. Glover, 104, S. Ct. 2820, (1984)

Thus, by well settled law, the respondents' liability is clear.

That H. Bowes was a state officer or official is clear not only by the decisions of the 2 District Courts but by statute law of Pennsylvania and most of the other various states. From Kipp v. People's Bank & Trust Co., 110 N.J.L., 178, 164, A 253, 254, (1933) comes this; par. 1, A Notary is a public officer. Also this case says:

> "A Notary Public has not only the power and duties that come to him from the laws of the jurisdiction of his appointment, but also those that because of his appointment come from foreign states and nations."

And from New York Jurisprudence (42 NY Jur #1) it states: under Generally, Definitions,

> "A Notary Public is defined as an officer whose duty is to attest the genuineness of any deeds or writings in order to render them available as evidence of the facts herein contained."

and from the Pennsylvania Law Encyclopedia comes this: under Notaries # 1 pg. 116:

> A Notary Public is a public officer whose function is to administer oaths, to attest and certify documents in order to give them credit in foreign jurisdictions, to acknowledge and certify conveyances and to perform such official acts as the protesting of commercial paper."

Since H. Bowes surely was an officer taking the depositions under her power from the Notary Public Act of 1953, then she surely was the officer who was the examiner at the two depositions.

From Anderson, Penna. Civil Practice, on Rule 4017.5 comes this:

> "If the deposition is taken exclusively upon oral examination, the examiner takes no active part in the questioning or interrogation of the witness. After having administered the oath he then presides over the taking of the deposition but does not examine the witness."

Therefore, while H. Bowes may have been doing stenographic work during the taking and transcribing of the testimony, she surely was performing in an official capacity, working directly under law and supposedly helping guarantee to both parties, the right of Due Process that flows directly from the U.S. Constitution, and under the 5th and 14th amendments.

The decisions of the two District Courts of Pennsylvania have to have the effect of weakening both the Penna. Rules of Civil

Proceedure and Federal Rules of Civil Proceedure. They say, that henceforth and in complete contradiction to the above laws, that only a stenographer and not a state officer shall officiate at depositions when using a Reporter, Notary Public. These decisions could make it difficult to hold anyone liable for untruthful statements and leave open a wide possibility for alterations during the transcribing of depositions.

Both Rule 28 of the Fed. Rules of Civil Proceedure and Rule 4015 of the Penna. Rules of Civil Proceedure say exactly the same thing:

> (a) "Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to adminster oaths and take testimony."

The respondents had to have conspired with a state officer during and after the taking and transcribing of the depositions, under color

of state law.

(B) Private Parties who are also lawyers acted under Color of State Law when they allegedly arranged for an employee who is also a Notary Public to purposely not place her seal on an officially filed affidavit.

The abstract words of Due Process as guaranteed by the 5th and 14th amendments have never been easy to explain but as most authorities agree, they refer to how a thing is done as well as the way it is done. When in a lawsuit that already had a glaring breach of Due Process, by the respondent attorneys asking a Notary Public to refrain from certifying or sealing official court documents, which she did and then these same respondent attorneys allegedly asking and having an employee Notary Public, L. Kabay to refrain from placing a state seal on another officially filed document, an affidavit, surely a pattern of violation of Due Process is evident. The acts of having two Notarys leave off three seals (2 depositions and 1 affidavit) and improper certification on

those documents seem to make clear that the respondents had no respect for Due Process, the U.S. Constitution or Penna. State Laws. Their acts would show rather that they intended to follow the law in the way it suited them best and to their best interest in favoring or keeping a corporate client.

When the Berger Affidavit was filed, one copy with a seal and one copy without a seal, at the exact same time 4:03 PM on Sept. 29, 1983 by Linda Kabay, they obviously must have been prepared at the same time. It would seem likely that a seal was easily at hand. Therefore it must be concluded that the act of leaving off the seal must have been intentional by the respondents. While the purpose of doing this was probably to make Berger not be responsible for anything he might have said in the affidavit that could have been considered untruthful, it is hard to ascertain this exactly without the benefit of Discovery and trial. The important thing here is that both sides were under the

protection clause of the 14th Amendment. The respondents should have had seals and proper certification on all affidavits and depositions submitted to the state court, the same as the Petitioner was required to do. The Petitioner did have a proper seal on his affidavit submitted with his Brief in opposition to the Defendant's Motion for Partial Summary Judgement, and on the depositions taken by Kaufman, Pro Se., but the respondents, all educated lawyers did not.

There is no doubt that the law is clear on this as is stated by the Penna. Notary Public Act of 1953. Sec. 158 saying:

> "Every Notary shall provide a public notorial seal with which he shall authenticate all his acts, instruments annd attestations."

and from sec. #160 of the same Act it states:

> (a)"The seal of a Notary Public shall be impressed opposite the jurat and affixed in such manner as to make a legible impression on all documents executed."

The Penna. legislature in 1953 did not make an exception as to whether one official

document was an original and one official document was a copy or not. They simply used the word All to mean what it said All. The Notary Public Act stems directly from the 5th and 14th Amendments and helps guarantee Due Process and Equal Protection of the Laws. The recent case of Bernal v. Fainter, 81 L.Ed. 2d. 175 (1984) stated this court's views on Notaries by saying, "We recognize the critical need for a notary's duties to be carried out correctly and with integrity." And it further stated "To be sure, corsiderable damage could result from the negligent or dishonest performance of a notary's duties." That L. Kabay was negligent is apparent, and as to whether she went further and purposely violated the law in deference to the respondents and her need for a job, only discovery and a trial can tell accurately. But the seal was left off and something as sacred to the law as an affidavit was left amiss. In a Civil case where the Petitioner's Civil Rights were

allegedly violated, L. Kabay's actions with the respondents could only have helped add, "fuel to the fire".

Emphasizing the proper significance that Courts have given to a properly certified and sworn to affidavit is the case of Cord v. Smith, 370 F. 2d. 418, C.A. Cal. (1966) from which comes this:

> "Document which was not sworn to before a Notary but which stated that it was made under penalty of perjury was not a proper affidavit in Federal Court."

This case shows the importance courts have placed on proper affidavits. Cord further says in headnote #6 "Court can always set aside decision that was obtained from it by fraud." Thus, courts are not bound to accept results of lawsuits that were gained through Misconduct.

Also emphasizing the importance of a seal, is the following case of Hill v. Alliance Bldg. Co., S.D. 60 N.W. 752, 6 S.D. 160, 55 Amm S.R. 819 (1894) which states:

> The omission of the signature of the officer from one affidavit and the

omission of the seal or certificate of authority from another affidavit, although bearing the signature of a person purporting to be a Notary Public residing in the state of Nebraska, were fatal defects and the admission at the time of trial of extrinsic evidence to supply the omission was improper."

Affidavits, an essential part of Due Process are not treated lightly by the courts.

The respected authority, 3 Am Jur 2d states in sec. 18, pg. 395:

"Where a jurat is subscribed by a Notary Public, the better practice would seem to be, for it to be attested by the signature and seal of the Notary, with a statement of the county for which he is appointed."

and further it says:

"A court will take judicial notice of the notaries within its own county and in some jurisdictions within the entire state and it will of course take judicial notice of the laws of the state confering upon notaries or other officers the authority to administer the oath."

From another respected authority, 2A C.J.S. #39, pg. 476, comes this:

"The jurat is prima facie evidence of matters stated therein, and the seal is prima facie evidence of authority and certification."

Thus a state officer, a notary, Ms. Kabay when she allegedly acted with the respondents in not placing her seal near the jurat on an

official court document had to be acting under color of state law. The 6th Circuit in the Krueger v. Miller case has held that Notaries can be held liable for their acts of Misconduct under 42 U.S.C. #1983 and therefore under case law, her co-conspirators, the respondents can and should be held liable as well. While Kaufman did win his motion in the state court lawsuit, that did not excuse the respondents from allegedly having an employee perform her duties in a non legal way. The case of Washington v. Official Court Stenographer, 251 F. Supp. 945 (1966) answers this situation well as follows:

> Action by indigent prisoner against court stenographer for damages for alleged failure of latter to comply with two orders directing stenographer to furnish prisoner with notes of testimony taken at trial in order that prisoner might prepare petition of habeus corpus was not rendered moot even if transcript had already been provided, and fact that wrong alleged was not continuing would be irrelevant to existence of cause of action. 42 U.S.C.A. #1983.

Therefore the alleged conspirators can find no excuse for their actions in the fact

that the Honorable State Court Judges Narrick and Staisey awarded the Motion for Partial Summary Judgement in the Petitioner's favor. Nor did the final settlement under forced conditions of the Kaufman v. Penn Needle Case reduce their liability for conspiring with two state officers, L. Kabay and H. Bowes.

While the Western District Court can find nothing wrong with an official affidavit that lacks a seal, (app. B) and suggests that no evidence exists to support this claim, the evidence does exist in the safekeeping of the Prontonotory's Office of Allegheny County, Pennsylvania. An examination of that evidence will find one affidavit with a seal and one without one.

Due Process as explained in Penna. Law Encyclopedia, sec. 271 pg. 170, ch. 9 recuires that the respondents be held responsible. It states:

> "Similary, due process or due process of law has been defined as a course of legal proceedings according to those rules and principles which have been established

for the protection and enforcemment of human or private rights as meaning that there can be no proceeding which may result in deprivation of life, liberty or property without the observance of rules for the security of private rights";

And from Endicott Johnson Corp. v. Smith 266 U.S. 291, 69 L.Ed. 293, 45 S. Ct. 63 (1924) saying:

"Due process of Law" implies and comprehends the adminstration of laws equally applicable to all under established rules which do not violate fundemental principles of private rights."

The respondents' liability is clear.

C. These same lawyers who allegedly committed the above acts, did so deliberately and wilfully to violate the petitioner's Civil Rights under 42 U.S.C. #1983 and with fraudulent intent, to violate his rights under the 5th and 14th Amendments.

The primary thrust of this lawsuit now at bar is that the respondent attorneys first allegedly created a plan in Pittsburgh with their clients Penn Needle for the 2 key witnesses Agnew and Boukis to testify untruthfully at two upcomming depositions and implemented that plan on June 27, 1983 at the meeting at McCrory headquarters, York, Penna. and then later allegedly acted with various

McCrory and Rapid American employees, in having that purposely false testimony removed and changed by the Notary-Public-Examiner, H. Bowes. The first allegation of wrongdoing is proven by the two letters attached to this Petition as (App. D and E) and their comparison to what appears in the actual Agnew deposition. The first letter from Kaufman to Berger written on April 6, 1983 states as follows: (first paragraph)

> "As per our conversation yesterday and my meeting with Bill Agnew, McCrory's, I am listing the following prices which were approved by him and subject to final approval on the return of his merchandise mgr. tomorrow. He expects no problem with this and will be in touch with you."

The meeting of April 5, 1982 is then acknowledged by the Berger letter of April 13, 1982. Answering accordingly,

> "Received your letter regarding prices submitted to McCrory's"
>
> "I hope these prices will be implemented as quickly as possible."
>
> "I think however that you should bear in mind that PENN NEEDLE ART CO. is still taking the brunt of the price absorption."

These letters prove first that there was a

meeting on April 5th, 1982 between Agnew and Kaufman at Agnew's York office and second that there was intense pressure by Penn Needle on Petitioner by Penn Needle for Kaufman to either reduce his commission or be forced off the line by the 2 companies. This was the true gist of the meetings of April 5, 1982 and the Post meeting of June 19, 1981 that was not allowed to surface. Agnew's answer to the question about the meeting of April 5, 1982 as it appeared in the completed text was:

> "Would you clarify that question? My job as a buyer in working with merchandise, is discussion of pricing of items at all times. I'm not sure what you are asking."

This answer goes to the heart of the case and was completely different from the "I don't recall, I don't remember answers that were actually given, about the meeting, and the 2nd meeting of June 19, 1981. The main reason for this #1983 action is the alleged conspiracy with a public officer to change and alter the transcripts. This second and all important allegation is best proved by

Kaufman's letter of July 9, 1983 to John Shorall, one of his then Pittsburgh counsel. (App. F, G, H) In it petitioner described what he had witnessed and heard on June 28, 1983. This letter was written only 11 days after the deposition took place so it describes that day with the accuracy of almost immediate recall. In it Kaufman was trying to show and prove to John Shorall, Esq. that there was a meeting of April 5, 1983 and that it was completely denied by the deponent. This was long before Kaufman saw the full completed transcripts on September 27, 1983. The fact that Kaufman did not have copies of the completed transcripts until Sept. 27, 1983 is acknowledged in the Respondents BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS. In that document they say "Plaintiff had copies by Sept. 27, 1983." Therefore there is little doubt that what was described in the letter was what actually took place. Parts of the letter appear below: under Dear John,

> I am enclosing some copies of some items I thought were important to the case. First is the copy of the phone bill showing my call from McCrory's, York office downstairs at 4:00 PM April 5, 1983. (The 1983 was a typographical error. The correct date was 1982.) The reasons it shows a number of 755-0000 is that it was dark there in their hall and I could not read the number. But the Bell Co. could easily verify that this is the phone in the hallway at McCrory's office.
>
> The meeting I had there that day goes to the heart of the matter with Bill Agnew and McCrorys. What he told me at that meeting tells the story of the fraud he, his higher officials and Mr. Boukis tried to pull on me. This is the reason why he tried to say repeatedly, he did not remember the meeting. This was an out right lie and total fabrication of the truth.

This is the truth and as President Abraham Lincoln said in one of his famous quotations: "Ten Thousand Angels riding 10,000 white horses cannot change it." There is only <u>one</u> truthful answer to this case and it appears in the letter of July 9, 1983. Bill Agnew had absolutely no remembrance of the meeting of April 5, 1982. The truth is <u>not</u> in the text.

Further from that letter of July 9, 1983 comes the following statement that forms a

basis for this lawsuit against the "Berkman" lawyers.

> "I feel that Mr. Osterman and Mr. Berger, together with a lawyer from McCrorys purposely set this up to avoid telling about this meeting and the second smaller meeting on June 19, 1981. They did this to protect the higher ups and their own jobs. Since Mr. Osterman is obviously not Mr. Agnew's lawyer or Mr. Bukis's lawyer, he did (not) have the usual client lawyer relationship to give him the right to do this sort of thing."
>
> "I know it happens but I cannot sit still for someone or possibly several people telling a key witness to distort the truth. This will have to be included in any subsequent investigation by the F.B.I. I must have Mr. Agnew and Mr. Bukis tell the truth at trail (trial) as this is the winning point to gain the commissions they cheated me out of on McCrorys. My testimony must be corroborated by truthful answers. I feel strongly since I heard Paul Berger say they stayed overnight at the Holiday Inn in Harrisburg Monday night and I also overheard Mr. Agnew talking to Mr. Osterman about what they did the day before in York. I feel what I am saying now is the truth."

That the respondents were involved in an allegedly manipulated lawsuit is beyond question based on the July 9, 1983 letter. And also submitted with this petition is the copy of the phone bill that shows the call of 4:00 PM, April 5, 1982 from the McCrory

office in York by Kaufman. This call was made as per Kaufman's custom at the time of charging many long distance call to his home and office phone. (App. H.)

Also backing up what was said in this letter is a copy of the bill paid by Mr. Berger for he and Mr. Osterman for their stay on the night of June 27, 1983.(App. G) This bill also shows that what Kaufman heard as stated in his letter of July 9, 1983, was true and correct. Petitioner heard about their stay during the first recess in the conversation mentioned in the letter between Agnew and Osterman. This bill also shows the two local telephone calls that were made by Berger and Osterman that night, allegedly to Sullivan and H. Bowes. However, only Discovery and Trial can get at the truth of these calls, their purpose and who they were made to. Penn Needle as far as Kaufman knows had no local customers in Harrisburg at the time that they would be making after 7:00 PM. This arrival time was given to Plaintiff in

the deposition on Jan. 17, 1986 of Fred Siebert, Holiday Inn, Center City controller after being duly sworn. On July 19, 1983, Kaufman did report the untruthful testimony of Agnew and Boukis among other things to Agent George Dulaney of the Harrisburg Federal Bureau of Investigation Office. This conversation was confirmed in a letter to Mr. Dulaney by Kaufman on July 20, 1983. What Kaufman told Mr. Dulaney at the time was the same as appeard in the letter of July 9, 1983 and what is now being told to this Honorable Court. The Dulaney letter was made part of the complaint as Exibit #41.

The respondent lawyers must be held responsible for their part in this alleged conspiracy. Every conspiracy normally has a nucleus of one or more person who plan and guide it. Berkman, Ruslander et.al were the nucleus on this one. And further the Federal Proceedure, Lawyers Edition, chapter 26, bock 10 says under sec. 119 as follows:

"Noting that some inexperienced lawyers

> feel that it is improper to ask a witness who is not a client to confer with them about the case, the writer states that there is no basis for any apprehension so long as the purpose of the conference is not to influence a witness but only to review the facts as the witness observed or heard them."

But in this case where the alleged purpose of the pre deposition conference was to lay the ground work for untruthfull testimony and later changes for protecting their clients, the deponents and their companies, this was highly improper and allegedly illegal. The case of Litton Systems v. American Tel & Tel. 91 F.R.D. 574, (1981) explains this well:

> "#1 Attorney and Client #38 "Attorneys are deemed officers of the court; they operate on an honor system, and those who violate the trust reposed in them, must be appropriately disciplined to provide both specific and general deterrence of such conduct."

The Berkman Attorneys knew that they were in alleged violation of this honor code by wilfully attempting to use improperly taken and transcribed depositions, in state court, and that they were acting contrary to Bar Rules of both the State of Pennsylvania and the United States Federal Judiciary. One

reason for their actions is found in footnote #1 of the Western District Court's Memorandum. This states that:

> [1] "Defendants' motion also asserts that the Court should decline to exercise jurisdiction as a matter of comity. Defendants contend that plaintiff's allegations are directly related to plaintiff's state action."

Naturally they would have hoped that their only problem they could have had with the tampered depositions was minor action by the state court.

But their actions in violating Kaufman's guaranteed rights under the 5th and 14th amendments to the Constitution cannot be washed away so lightly. The case of Monroe v. Pape, 365 U.S. 167,81 S.Ct. 473, 5 L.Ed. 2d 492 (1961) states that:

> "Federal remedy is supplementary to the state, and state remedy if any need not be first sought and refused, before federal one is involved. 42 U.S.C.A. 1983."

Keeping such alleged wilful misconduct on the part of private parties conspiring with a state official in violation of a person's civil rights, only in the state system can

only encourage more such acts and on an ever grander scale in the future.

In the recent case of Berkel v. Fox Farm and Road Machinery, 581 F. Supp. 1248 (1984) arises another definition of how attorneys are to conduct themselves, as follows:

> par. 2 "Attorneys are officers of the court and their first duty is to the administration of justice."
>
> par. #3 of this case says also: "Whenever an attorney's duties to his client conflict with those he owes to the public as an officer of the court, he must give precedence to his duty to the public."

Thus regardless of how anxious Penn Needle was to lessen the possible loss in the Kaufman v. Penn Needle Case, they did not have to accede to their client's requests and demands. When they entered into the State Court in Pittsburgh on November 18, 1983 and stated flatly that there was nothing wrong with the depositions both orally and in writing, then since they knew as the Petitioner knew that they were wrong, they were clearly making an alleged false statement to the court that day. And further

they tried to harm Kaufman's chances of striking the wrong parts of the depositions by asserting to the court untruthfully that the depositions were Duly certified when in fact they were not. Winning a case for a client in a zealous defense is one thing, but winning a case for a client by allegedly manipulating evidence is another thing and clearly wrong and illegal. And allegedly aiding the perpretrator of that alleged illegality in the concealment of her illegal acts involved the respondents clearly and overwhelmingly.

And in the comparable case of Dennis v. Sparks, 449, U.S. 24, 28 101 S. Ct. 183, 186-187, 66 L.Ed. 185 (1980) where another state official, a state judge acted in alleged conspiracy in misconduct, the court held that:

> The action of the private parties accused of conspiring with the judge is not subject to dismissal. Private persons jointly engaged with state officials in a challenged action, are acting "under color" of law for purposes of #1983 action."

H. Bowes was a state official, however minor her role may have seemed at the time and the respondents, her alleged co-conspirators must be held liable for their allegedly reprehensible and wilful acts. And in summing up the entire situation comes these prophetic words of that great lawyer, president and humanitarian, Abraham Lincoln: Abraham Lincoln Encyclopedia, Pa. State Library pg. 180:

> "Lincoln advised any young man choosing the law for a calling" "to resolve to be honest... and if you cannot be an honest lawyer, resolve to be honest without being a lawyer."

D. The U.S. District Court that conducted this case, acted improperly and in violation of the petitioner's right's under the 5th, 7th and 14th amendments by allegedly having a Court Reporter delete an important part of the transcript of the Status Conference, thus predjudicing those constitutional rights.

This is a lawsuit based on the premise that various private parties (lawyers) should not attempt to have state officers (notaries) perform allegedly illegal and/or negligent acts, in altering depositions or making improper certifications on official

documents. Yet in the very Court that was attempting to conduct a lawsuit on this constitutional issue of fair and honest pre-trial proceedure based primarily on the 14th amendment, the very same thing allegedly happened again.

Refering to the attached exibit (Tr1, 2 and 3), during a discussion between the Petitioner and the Western District Court, that took place on December 30, 1985, in an official Status Conference in a Court Conference Room; Kaufman was attempting to explain to the Court, why he had not yet begun discovery. He explains on line 20 of the transcript:

> MR. KAUFMAN: "And there was another reason, Your Honor, and that was because a similar case filed in the Middle District was turned back, and of course, its under appeal. That's why I didn't go forward on it yet."

Petitioner was concerned that the Motion for Dismissal would be granted, thus making the discovery meaningless and wasted.

But between line 23 and line 24, there was another comment by the court that was allegedly deleted by the court from the

transcript. This was the following comment by the Western District Court: (paraphrased)

> "What the Middle District did has nothing to do with what the Western District does, this court decides for itself."

This allegedly omitted statement by the court was told to Petitioner's advisory counsel, Stephen J. Hogg, Esq. of 135 N. Hanover Street, Carlisle, Penna. during a conference between he and Kaufman on January 13, 1986. This was long before Kaufman received the completed transcript on February 28, 1986 from the Official Court Stenographer, Virginia S. Pease. Mr. Hogg who is an honor graduate of Dickinson School of Law and a practicing attornney for some time was told in detail about the Status Conference in a long 2 1/2 hour discussion of the two cases. He has recently advised Petitioner of his strong memory of the description of what was said at the Status Conference. The alleged deletion of the remarks by the Court and its Reporter is in complete contrast to what Mr. Hogg remembers of his conference on Jan. 13, 1986. Mr. Hogg was referred to in the Exibit (Tr-1, 2, and 3).

Yet this very same Court allegedly committing a similar act, was ruling on a Motion for Dismissal on a Case involving

changed and altered deposition transcripts. The question arises as to how a Court that allegedly thinks so little of changing its own transcripts of an Official Status Conference be able to judge fairly and without predjudice on similar issues. And a further question arises of how often this type of thing is done on Court papers and whether it is taken very seriously by either Courts or lawyers. For these reasons among others, a Federal remedy in this case should be granted. The standards must be improved or American Democracy and the American People will be the true losers, not the petitioner.

The Western District Court in its MEMORANDUN OPINION refers to the case of Conley v. Gibson, 355 U.S. 41, 45-46 (1957) for reiterating the stringent standards that a Court must use in granting dismissal of Civil Cases. It states as follows:

> "The Supreme Court has stated that "a complaint should not be dismissed for failure to state a claim unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

and from Beisenbach v. Guenther, 588 F. 2d. 400, 402 (3rd Cir 1978) "The Court must construe all allegations as true". yet if this same court making such a ruling allegedly has changes made in its own transcript, then it must not have been able

to rule without malice on a dismissal as this Honorable Court has carefully set down above.

The principle thought behind dismissal of cases is to make courts always accessible for persons with valid cases and to eliminate cases from the dockets that are patently without merit. Yet the 7th Amendment still must be followed on this issue to insure that judges cannot indiscriminately remove the right to a trial by Jury. The 7th Amendment says:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

In explaining this Amendment, the World Book Encyclopedia, vol 18, pg. 142 states the following:

> "The framers of the constitution considered the right to jury trial to be of great significance. Experience has shown that juries bring a quality of mercy and good common sense to the adminstration of the laws when lawyers and judges forget where justice lies. Juries have sometimes inflicted injustice, but for hundreds of years they have been an important safeguard between man and his government."

The founding fathers were well aware of the fact that the nation was beginning to grow rapidly in 1787 and that countless disputes would arise over the years, but they meant for citizens to have a proper forum for

settling their disputes under the safeguards of proceedural due process. Courts cannot remove these constitutional rights under the 5th, 14th and 7th amendments on the basis of personal whim or personal disdain for the difference between "right and wrong".

The alleged removal of the portion of the Discovery Status Conference also tended to predjudice the Petitioners Rights to a proper appeal since the Appeals Court could not hear the true nature of the Western District Courts comments. The statement that was allegedly removed would have made it appear that the Court was not in total agreement with the Middle District's decision on the Kaufman v. McCrory case., had it been left in. But when the Western District's Decision came out, it hewed closely to the Middle District's decision. As long as it was done on proper grounds, this was the Western District Court's proper right. But the alleged removal of a portion of the transcript made it improper.

The petitioner is a Pro Se. litigant with a strong regard for law and order, based on the Equal Rights Clause of the 14th Amendment. The case of Martin v. Wainwright (1976 CA 5, Fla.) 526 F. 2d 938 addresses

the issue of dismissal of Pro Se. Complaints as follows:

> "District court must be sensitive to problems of Pro Se plaintiff in Civil Rights actions and not be too quick to dismiss complaint for failure to state technical cause of action."

And in the case of Kedra v. Philadelphia (1978 D.C.Pa.) 454 F. Supp. 652, it states:

> "Unless claim is patently frivolous or insubstantial, defendents may be sued in individual capacity under 42 U.S.C. 1983."

Petitioner's claim is neither frivolous or insubstantial but the Western District Court's decision under allegedly prejudiced circumstances would make it appear that way.

CONCLUSION

For the foregoing reasons and for the protection of justice, a writ of certiorari should issue.

Respectfully submitted,

William I. Kaufman
1609 Elbridge Rd.
P.O. Box 6195
Harrisburg, PA
17112

William I. Kaufman
Pro Se.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM I. KAUFMAN

Plaintiff,

vs.

Civil Action
No. 85-2380

BERKMAN, RUSLANDER, POHL, LIEBER
& ENGEL, ATTORNEYS AT LAW
R. DENNIS OSTERMAN, ESQ.
ROBERT ENGEL, ESQ. AND
FOSTER S. GOLDMAN JR., ESQ.

Defendants

JUDGMENT ORDER

AND NOW, this 17th day of January, 1986, upon consideration of Defendants' Motion to Dismiss filed in the above captioned matter on October 29, 1985,

IT IS HEREBY ORDERED that this Motion is GRANTED and that judgement be, and hereby is, entered in favor of Defendants and against Plaintiff.

Alan N. Bloch
United States District Judge

cc: William I. Kaufman, pro se
1609 Elbridge Road, P.O. Box 6195
Harrisburg, PA 17112

Foster S. Goldman, Jr. and
Dennis R. McEwen, Esquires
40th Floor, One Oxford Centre,
Pittsburgh, PA 15219

Richard S. Dorfzaun and Judity F. Olson,
Esquires
Two PPG Place, Suite 400,
Pittsburgh, PA 15222

Exibit (App. A)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM I. KAUFMAN

Plaintiff,

vs. Civil Action No. 85-2380

BERKMAN, RUSLANDER, POHL, LIEBER
& ENGEL, ATTORNEYS AT LAW
R. DENNIS OSTERMAN, ESQUIRE
ROBERT ENGEL, ESQUIRE AND
FOSTER S. GOLDMAN JR., ESQUIRE

Defendants.

MEMORANDUM OPINION

BLOCH, District J.

Plaintiff, William I. Kaufman, filed the present action pro se on October 7, 1985, alleging that defendants--Berkman, Ruslander, Pohl, Lieber & Engel, Attorneys-at-Law, and R. Dennis Osterman, Robert Engel, and Foster S. Goldman, Jr.--violated his civil rights under 42 U.S.C. 1983. Plaintiff's claims are based on two depositions taken in preparation for a separate lawsuit brought by plaintiff against Penn Needle Art Company, a client of the defendant law firm, in the Court of Common Pleas of Allegheny County for unpaid sales commission. Plaintiff contends that

defendants conspired with Helena Bowes, the reporter who transcribed the depositions and who, as a notary public, adminstered the oaths to the deponents, to alter or omit portions of testimony from the transcripts of the depositions and to fail to duly certify the transcripts under the requirements of Pennsylvania's Notary Public Law of 1953.

In the underlying state court action against Penn Needle Art Company, plaintiff filed a "Motion of Objections to Certified Depositions and Request of Court for Wrongful Sections to be Stricken Thereof From Admissibility". Plaintiff claims that defendants violated his constitutional rights to due process by asserting to the state court that the depositions were accurate and duly certified when, in fact, they were not. Plaintiff contends that because the state court denied his motion, he would have been forced to use the allegedly inaccurate depositions as an important portion of evidence in the state court action. As a

result, plaintiff claims he settled the case for an amount of money substantially less than the amount he was seeking.

Plaintiff also alleges that defendants conspired to violate his rights to due process by simultaneously submitting in the state court action two motions for partial summary judgment that were identical except for the fact that the affidavit of Paul Berger in one of the motions had the seal of the notary public embossed on it, but the affidavit of Paul Berger in the second motion did not have the seal of the notary public.

Presently before this Court is defendants' motion to dismiss for failure to state a claim upon which relief can be granted.[1] For the reasons that follow, defendants' motion is granted.

---

[1] Defendants' motion also asserts that the Court should decline to exercise jurisdiction as a matter of comity. Defendants contend that plaintiff's allegations are directly related to plaintiff's state action and that this Court should not exercise jurisdiction over a claim based solely on alleged improperties in the functioning and operation of the state court system.

On a Fed. R. Civ. P. 12 (b)(6) motion to dismiss such as that asserted by the defendants, the Court must limit its consideration to the allegations of the complaint. Beisenbach v. Guenther, 588 F.2d 400, 402 (3d Cir. 1978). Further, the Court must construe all allegations of the complaint as true. The Supreme Court has stated that "a complaint should not be dismissed for failure to state a claim unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted).

In order to state a cause of action under 42 U.S.C. 1983, the plaintiff must allege (1) that some person has deprived him of a federal right, and (2) that the person who deprived him of that right acted under color or state law. Gomez v. Toledo, 446 U.S. 635, 640 (1980). With respect to the first element, vague and conclusory allegations of a drprivation of a federal right are

insufficient for asserting a cause of action under 1983. See Rotolo v. Borough of Charlerio, 532 F.2d 920, 923 (3d Cir. 1975).

Plaintiff claims defendants caused Linda Kabay, a notary public, to put her seal on one affidavit attached to a summary judgment motion but to not put her seal on an identical affidavit attached to an identical motion filed at the same time. Plaintiff contends that by submitting the two summary judgment motions, defendants violated his rights to due process. Plaintiff, however, provides no facts that could be construed as providing a basis for entitling him to relief. Even in applying standards to plaintiff's pro se complaint that are less stringent than those for formal pleadings drafted by lawyers, see Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam), it appears beyond doubt that with respect to his allegations involving the conduct of Linda Kabay, plaintiff can prove no set of facts that would entitle him to relief.

Exibit (App. B-5)

The second element of a 1983 cause of action requires an allegation that the person who deprived plaintiff of his federal right was acting under color state of law. Gomez, 446 U.S. at 640. In Polk County v. Dodson, 554 U.S. 312 (1981), the Supreme Court stated "[A] person acts under color of state law when exercising power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." Id. at 317-18 (quoting United States v. Classic, 313 U.S. 299, 326 (1941).

In his brief in opposition to defendant's motion to dismiss, plaintiff concedes that the acts allegedly performed by defendants were private acts by private attorneys that do not constitute state action for purposes of 1983. See Polk County, 454 U.S. at 318 (attorney, by virtue of being "officer of the court" does not act under color of state law for purposes of 1983); see also Henderson v. Fisher, 631 F.2d 1115, 1119 (3d Cir. 1984).

Plaintiff argues, however, that defendants conspired with Helena Bowes, the reporter who transcribed the depositions, and that Ms. Bowes, as a notary public authorized to adminster oaths and to take depositions under the Pennsyvania Notary Public Law of 1953, was a state official who acted under color of state law in allegedly altering or omitting testimony in the transcripts of the depositions and in failing to properly certify the transcripts. It is well established that a private party who conspired with state officials who act under color of state law can be found to be acting under color of state law for purposes of 1983. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970).

Plaintiff however, has already litigated the issue of whether Ms. Bowes was acting under color of state law for her conduct with regard to the two depositions, and therefore, is collaterallly estopped from relitigating the same issue in the instant action. In

Kaufman v. McCrory Stores Division of McCrory Corp., 613 F. Supp. 1179 (M.D. Pa. 1985), plaintiff named Ms. Bowes as a defendant in a 1983 action based on her conduct concerning the same depositions involved in this action. The district court found that even though Ms. Bowes may have been a state official as a notary public who adminstered the oath to the deponents, her actions as a privately employed stenographer in recording and transcribing the depositions "entailed functions and obligations in no way dependent upon state authority." Id. at 1182 (quoting Polk County, 454 U.S. at 318).

A judgment in one suit operates as a collateral estoppel in a second suit as to those matters that were in issue and upon determination of which the judgment in the first suit necessarily depended. IB Moore's Federal Practice 0.441[2], at 725. Mutuality of parties in the two suits is not necessary, and a party to an action who has had a full and fair opportunity to litigate an issue

determined by judgment in one suit is estopped from relitigating the same issue in a subsequent action against a different defendant. See Parkland Hosiery Co. v. Sure, 439 U.S. 322, 328 (1979). In the instant case, plaintiff is attempting to relitigate the issue of whether Ms. Bowes was acting under color of state law. Even though defendants were not a party to the action in the Middle District of Pennsylvania, they may assert collateral estoppel because plaintiff had a full and fair opportunity to litigate that issue in that action.

The conclusive effect of the prior adjudication constitutes estoppel only with respect to issues actually litigated and necessary to support the initial judgment, and in the absence of identity of issues, the party asserting collateral estoppel may not prevail. Donegal Steel Foundry Co. v. Accurate Products Co., 516 F.2d 583, 588 (3d Cir. 1975). In dismissing plaintiff's claim in Kaufman, the district court held that Ms.

Bowes was not acting under color of state law for purposes of 1983. Kaufman, 613 F. Supp. at 1182. It is clear that the issue litigated in that case was the same issue based on the same factual background as that asserted in this case, and the judgement of that case was dependent on the determination of that issue. Plaintiff, therefore, is collaterally estopped form attempting to relitigate the issue in the instant case. See Donegal Steel Foundary Co., 516 F.2d at 588. Because plaintiff fails to allege a basis on which defendants acted under color of state law, a 1983 claim must fail. Defendants' motion to dismiss for failure to state a claim upon which relief can be granted is, therefore granted.

An appropriate Order will be issued.

Date: 1/17/86

Alan N. Bloch
United States District Judge

cc: Counsel of record.

Exhibit (App. B-10)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 86-3063

WILLIAM I. KAUFMAN

Appellant,

v.

BERKMAN, RUSLANDER, POHL, LIEBER
& ENGEL, ATTORNEYS AT LAW
R. DENNIS OSTERMAN, Esq.
ROBERT ENGEL, Esq. AND
FOSTER S. GOLDMAN JR., Esq.

Appellees

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 85-2380)
District Judge: Honorable Alan N. Bloch

Submitted Pursuant to Third Circuit Rule 12(6)
June 26, 1986

Before: BECKER, STAPLETON, Circuit Judges, and
VAN DUSEN, Senior Circuit Judge

JUDGEMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Exibit (App. C-1)

Costs taxed against appellant.

BY THE COURT,

R. Becker
Circuit Judge

Attest:

M. Elizabeth Ferguson
Chief Deputy Clerk

DATED: AUG 12 1986

Exibit (App. C-2)

BILL KAUFMAN AND ASSOCIATES
Manufacturers Representatives
1609 ELBRIDGE RD.
P.O. BOX 6195
HARRISBURG, PA 17112

SPECIALIZING IN SALES TO
DISCOUNT STORES, DEPARTMENT STORES
AND HOME FURNISHING STORES

April 6, 1982

Dear Paul,

As per our conversation yesterday and my meeting with Bill Agnew, McCrory's, I am listing the following prices which were approved by him and subject to final approval on the return of his merchandise mgr. tommorrow. He expects no problem on this and will be in touch with you.

604 -- 63" 3.15
84" 3.45

604B 63" 3.30
84" 3.55

868 and XXX
888 63" 5.74
84" 6.27

Shorty drapes
limited basis only
1000 asst.

1/4 24", 1/4 30"
1/4 36, 1/4 45"
2.30 pr.

These are the items he will be using. The D550 and the 5550 were quoted at your book price and as I mentioned he is showing some interest in, pending results in the stores.

Exibit (App. D-1)

I just talked to the manager from the Orange, N.J. store and he approved the change on his order for 868 and 888 drapes to $5.74 63" and $6.27 84". Would you please ship this and the other orders as soon as possible. The Orange mgr. is Mr. Bob Hammond.

As I mentioned to you on the phone, Bill Agnew will be in touch with you.

Thank you for your kind cooperation on the above.

Best regards,

Bill

COVERING THE NORTHEAST, INCLUDING ALL MAJOR EASTERN CITIES

Exibit (App D-2)

PENN NEEDLE ART COMPANY
Manufacturers & Converters
Curtain & Drapery Fabrics
Novelty Curtains & Draperies

P.O. Box 5693 6945-49 Lynn Way
Pittsburgh, PA 15208
Phone 441-7551
7552

April 13, 1982

Mr. Bill Kaufman
Harrisburg, Pa.

Dear Bill:

Received you letter regarding price submitted to McCrory's.

I hope that these prices will be implemented as quickly as possible.

I think, however, that you should bear in mind that PENN NEEDLE ART CO. is still taking the brunt of the price absorption.

Needless to say, we are trying to accommodate McCrory, but you best be aware of this.

Regarding Shortie Drapes, I stress to you again that this must be handled very delicately, and before I can commit on this item, we better be sure of what we are offering to the customer.

Very truly yours,

PENN NEEDLE ART CO.

Paul J. Berger

OJB:ES

Exibit (App. E-1)

Tel. (717) 652-4019

BILL KAUFMAN AND ASSOCIATES
Manufacturers Representatives
1609 ELBRIDGE RD.
P.O. BOX 6195
HARRISBURG, PA 17112

SPECIALIZING IN SALES TO
DISCOUNT STORES, DEPARTMENT STORES
AND HOME FURNISHING STORES

July 9, 1983

Dear John,

I am enclosing some copies of some items I thought were important to the case. First is the copy of the phone bill showing my call from McCrory's, York office downstairs at 4.00PM April 5, 1983. The reason it shows a number of 755 0000 is that is was dark there in their hall and I could not read the number. But the Bell Co. could easily verify that this is the phone in the hallway at McCrorys office.

This meeting I had there that day goes to the heart of the matter with Bill Agnew and McCrorys. What he told me at that meeting tells the story of the fraud, he his higher officials and Mr. Bukis tried to pull on me. This is the reason why he tried to say repeatedly, he did not remember the meeting. This was ancout right lie and total fabication of the truth.

I feel that Mr. Osterman and Mr. Berger, together with a lawyer from McCrorys purposely set this up to avoid telling about this meeting and the second smaller meeting on June 19, 1981. They did this to protect the higher ups and their own jobs. Since Mr. Osterman is obviously not Mr. Agnew's or Mr. Bukis's lawyer, he did not have the usual

client lawyer relationship to give him the right to do this sort of thing.

I know it happens but I cannot sit still for someone or possibly several people telling a key witness to distort the truth. This will have to be included in any subsequent investigation by the F.B.I. I must have Mr. Agnew and Mr. Bukis tell the truth at the trail as this is my winning/ point to gain the commissions they cheated me out of on McCrorys. My testimony must be corraborated by truthful answers. I feel strongly since I heard Paul Berger say they stayed overnight at the Holiday Inn in Harrisburg Monday night and I also overhead Mr. Agnew talking to Mr. Osterman about what they did the day before in York, I feel what I am saying now is the truth.

For this reason among others, I feel now that is almost impossible for me to take any money from them until the proper authorities are notified. After tha t I feel we will win in open court when what has transpired has come out in full. The evidence will be gathered to prove the story, sordid as it may be. It looks like they have forclosed their options.

I am also enclosing a letter to Mr. Alvin Silver, the man who took over the line and the other man I mentioned in previous letter. I feel they have induced him to say false things on what I said when I bought drapes from him for the case by giving him special prices. He had tried for years to get these from me and I only quoted him book prices. This also may come out in the investigation.

The letter about the Jos. Krouse Lines store is the store where Bob Rosenberg now operates and who arranged for me to get the

Oxford price list. As you can see there is no love lost here. Penn Needle had accused them of making a false complaint on a $100.00 credit. He is one of the merchants who would support me in a prospective class action suit after this case is over and the Justice Dept. has made their decisions.

The final letter shows clearly that I was the Rep. on the Boscov account and should have been paid the commissions due me on the contract. The fact that they were taken under false pretense either by Penn Needle for themselves or by Penn Needle for Gill Snyder is of the same consequence. They were my commissions due me and I never agreed to have my commissions stolen from me. No one in their right mind would ever agree to such a thing.

I'm afraid this situation has reached the point where I cannot shirk my responsibilty as an honest citizen. And further more, I do want to jepordize what I feel is a case I will win anyway based on the truth.

Again I hope these items help you and I hope you will understand my position on this whole affair.

Thanks again for your kind and sincere help on all of this.

Best regards,

Bill Kaufman

Exibit (App. F-3)

ROOM LAST NAME FIRST INITIAL RATE DEPART

ADRESS STREET NO OF GUESTS ARRIVAL

CLERK CITY STATE ZIP CODE

COMPANY FOLIO NUMBER
89313

1010/8 0000 2 BERG

Holiday
Inn

Center City
Harrisburg
23 S. Second Street
Harrisburg, PA 17101
(717) 234-5021

JUN 27	PREV BAL		.00
210275	ROOM 1010-1		.00
JUN 27	PREV BAL		.00
JUN 27	LOCAL	.70	
JUN 27	ROOM	110.00	
JUN 27	TAX 6%	6.60	
110537	ROOM 1010-1	117.30	
JUN 28	RM CORR	11.00-	
JUN 28	TAX 6%	.66-	
110124	ROOM 1010-1	105.6	
JUN 28	AMEX	105.64-	

-----CHECKOUT-10-08AM------

Exibit (App. G-1)

Bell Of Pennsylvania
-DETAIL OF ITEMIZED CALLS-

717-652-4019
MAY 7 1982
PAGE 4

No.	DATE	TIME		PLACE		AREA	NUMBER	MIN *	
1	05 01	11 02AM	TO	FORT WAYNE	IN	219	456 1560	1 C	.23
2	05 01	10 17AM	TO	JOHNSTOWN	PA	814	535 8697	5 C	.62
3	05 02	11 43AM	TO	JOHNSTOWN	PA	814	255 1489	14 C	1.62
4	05 03	7 47AM	TO	FORT WAYNE	IN	219	747 9703	10 M	5.19
5	05 03	11 02AM	TO	WHEELING	WV	304	232 2730	29 A	11.50
6	05 03	10 05PM	TO	LEXINGTON	KY	606	254 1531	10 B	2.69
7	05 03	5 07PM	TO	ELMIRA	NY	607	734 8463	4 B	1.00
8	05 03	3 09PM	TO	SCRANTON	PA	717	344 7271	3 A	.99
9	05 03	9 16AM	TO	YORK	PA	717	757 8475	4 A	.82
10	05 03	4 27PM	TO	YORK	PA	717	757 8957	9 A	1.67
11	05 03	2 13PM	TO	JOHNSTOWN	PA	814	535 8697	15 A	4.35
12	05 03	4 45PM	TO	ALTOONA	PA	814	943 8114	2 A	.71
13	05 07	6 47PM	TO	LEXINGTON	KY	606	254 1531	19 B	5.01
14	04 05	4 00PM	TO	PITTSBURGH	PA	412	441 7551		
			FROM	YORK PA		717	755 0000	5 E	2.43

CONTD

Exibit (App. H-1)

(Court convened at 9:50 o'clock a.m.)

THE COURT: This is the date and time we have set for a status conference in the matter of Kaufman vs. Berkman Ruslander, et al, filed at Civil Acton 85-2380.

The purpose of today's conference is to set a pretrial schedule, and in that regard we're interested in hearing from the parties as to whether there's any further discovery to be conducted.

The Court is aware there is a motion to dismiss that has been filed and fully briefed, and we're going to get to it as soon as we can, but we don't hold up the discovery on that account.

Mr. Kaufman, do you have any discovery that you wish to conduct in this case?

MR. KAUFMAN: Yes, Your honor.

THE COURT: All Right. You tell me what it is that you want.

MR. KAUFMAN: I have prepared this paper here.

THE COURT: Concerning the discovery that you want to conduct?

MR. KAUFMAN: Yes, in the form of a letter to the Court.

THE COURT: You want to file interrogatories on these various people; is that what you've requested here?

MR. KAUFMAN: Yes.

THE COURT: What's been holding you back; why haven't you done that?

MR. KAUFMAN: Because of the motion for dismissal.

THE COURT: That doesn't hold up anything. Discovery--

MR. KAUFMAN: I'm a pro se, and I thought that --

THE COURT: Well, that's your problem. I mean, you have every right to get an attorney if you'd like to have an attorney to represent you.

MR. KAUFMAN: I have counsel. There's another reason, of course, Your Honor.

THE COURT: You do have counsel, you say?

MR. KAUFMAN: I have advisory counsel that I have used from time to time, two lawyers; one in Indiana and one in Carlisle, Pennsylvania.

THE COURT: All Right. And then, you have requested for production that you want, all right. And then you plan certain depositions.

I'll Let you see this in just a minute.

MR. McEWEN: Yes, Your Honor.

MR. KAUFMAN: And there was another reason, Your Honor, and that was because the similar case filed in the Middle District was turned back, and, of course, it's under appeal. That's why I didn't go forward on it yet.

THE COURT: When you filed this case here you must expect it to go forward, or you wouldn't file it.